

SENATE BILL NO. 489

INTRODUCED BY L. GROSFIELD

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTIES FOR FOURTH OR SUBSEQUENT OFFENSE DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION; ~~REQUIRING~~ ALLOWING AS A PENALTY FOR A FOURTH OR SUBSEQUENT OFFENSE THAT A PERSON ~~MUST~~ ENTER AND COMPLETE A RESIDENTIAL ALCOHOL DEPENDENCY TREATMENT PROGRAM OPERATED OR APPROVED BY THE DEPARTMENT OF CORRECTIONS; ALLOWING THE DEPARTMENT OF CORRECTIONS TO OPERATE A RESIDENTIAL ALCOHOL TREATMENT PROGRAM AT THE FORENSIC UNIT AT WARM SPRINGS; AMENDING SECTIONS ~~45-2-101~~, 53-1-202, ~~AND 61-8-731~~, AND 61-8-732, MCA; AND PROVIDING ~~A DELAYED~~ AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the incidence of fourth or subsequent convictions for driving under the influence of alcohol has not abated despite the threat of imprisonment; and

WHEREAS, alcoholism may be treatable with the appropriate level of intensive therapeutic programming; and

WHEREAS, a program of intensive residential alcohol treatment may reduce recidivism by persons who drive under the influence of alcohol.

THEREFORE, the Legislature finds that it is in the interests of public health and safety to establish a residential alcohol treatment program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 45-2-101, MCA, is amended to read:~~

~~"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:~~

~~(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.~~

~~———— (2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.~~

~~———— (3) "Another" means a person or persons other than the offender.~~

~~———— (4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.~~

~~———— (5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.~~

~~———— (6) "Cohabit" means to live together under the representation of being married.~~

~~———— (7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.~~

~~———— (8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.~~

~~———— (9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.~~

~~———— (10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.~~

~~———— (11) "Computer services" include but are not limited to computer time, data processing, and storage functions.~~

~~———— (12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.~~

~~———— (13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.~~

- 1 ~~—— (14) "Conduct" means an act or series of acts and the accompanying mental state.~~
- 2 ~~—— (15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo~~
3 ~~contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by~~
4 ~~a court of competent jurisdiction authorized to try the case without a jury.~~
- 5 ~~—— (16) "Correctional institution" means a state prison, county or city jail, or other institution for the~~
6 ~~incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.~~
- 7 ~~—— (17) "Deception" means knowingly to:~~
- 8 ~~—— (a) create or confirm in another an impression that is false and that the offender does not believe~~
9 ~~to be true;~~
- 10 ~~—— (b) fail to correct a false impression that the offender previously has created or confirmed;~~
- 11 ~~—— (c) prevent another from acquiring information pertinent to the disposition of the property involved;~~
- 12 ~~—— (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or~~
13 ~~other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or~~
14 ~~is or is not a matter of official record; or~~
- 15 ~~—— (e) promise performance that the offender does not intend to perform or knows will not be~~
16 ~~performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.~~
- 17 ~~—— (18) "Defamatory matter" means anything that exposes a person or a group, class, or association~~
18 ~~to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business~~
19 ~~or occupation.~~
- 20 ~~—— (19) "Deprive" means:~~
- 21 ~~—— (a) to withhold property of another:~~
- 22 ~~—— (i) permanently;~~
- 23 ~~—— (ii) for such a period as to appropriate a portion of its value; or~~
- 24 ~~—— (iii) with the purpose to restore it only upon payment of reward or other compensation; or~~
- 25 ~~—— (b) to dispose of the property of another and use or deal with the property so as to make it~~
26 ~~unlikely that the owner will recover it.~~
- 27 ~~—— (20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons~~
28 ~~of the same sex or any form of sexual intercourse with an animal.~~
- 29 ~~—— (21) "Document" means, with respect to offenses involving the medicaid program, any application,~~
30 ~~claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm,~~

1 ~~or other form.~~

2 ~~—— (22) "Felony" means an offense in which the sentence imposed upon conviction is death or~~
3 ~~imprisonment in a state prison for a term exceeding 1 year or a fourth or subsequent violation of 61-8-401~~
4 ~~or 61-8-406.~~

5 ~~—— (23) "Forcible felony" means a felony that involves the use or threat of physical force or violence~~
6 ~~against any individual.~~

7 ~~—— (24) A "frisk" is a search by an external patting of a person's clothing.~~

8 ~~—— (25) "Government" includes a branch, subdivision, or agency of the government of the state or~~
9 ~~a locality within it.~~

10 ~~—— (26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected,~~
11 ~~including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is~~
12 ~~interested.~~

13 ~~—— (27) A "house of prostitution" means a place where prostitution or promotion of prostitution is~~
14 ~~regularly carried on by one or more persons under the control, management, or supervision of another.~~

15 ~~—— (28) "Human being" means a person who has been born and is alive.~~

16 ~~—— (29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being~~
17 ~~in the possession of a person subject to official detention.~~

18 ~~—— (30) "Inmate" means a person who engages in prostitution in or through the agency of a house~~
19 ~~of prostitution.~~

20 ~~—— (31) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32,~~
21 ~~and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol~~
22 ~~by volume.~~

23 ~~—— (b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced~~
24 ~~by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol~~
25 ~~by volume.~~

26 ~~—— (32) An "involuntary act" means an act that is:~~

27 ~~—— (a) a reflex or convulsion;~~

28 ~~—— (b) a bodily movement during unconsciousness or sleep;~~

29 ~~—— (c) conduct during hypnosis or resulting from hypnotic suggestion; or~~

30 ~~—— (d) a bodily movement that otherwise is not a product of the effort or determination of the actor;~~

1 ~~either conscious or habitual.~~

2 ~~—— (33) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a~~
3 ~~court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an~~
4 ~~action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend~~
5 ~~as a prospective juror.~~

6 ~~—— (34) "Knowingly" a person acts knowingly with respect to conduct or to a circumstance described~~
7 ~~by a statute defining an offense when the person is aware of the person's own conduct or that the~~
8 ~~circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute~~
9 ~~defining an offense when the person is aware that it is highly probable that the result will be caused by~~
10 ~~the person's conduct. When knowledge of the existence of a particular fact is an element of an offense,~~
11 ~~knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such~~
12 ~~as "knowing" or "with knowledge", have the same meaning.~~

13 ~~—— (35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter~~
14 ~~6.~~

15 ~~—— (36) "Medicaid agency" has the meaning in 53-6-155.~~

16 ~~—— (37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a~~
17 ~~recipient under the medicaid program.~~

18 ~~—— (38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic,~~
19 ~~or other form:~~

20 ~~—— (i) that is used to claim specific services or items as payable or reimbursable under the medicaid~~
21 ~~program; or~~

22 ~~—— (ii) that states income, expense, or other information that is or may be used to determine~~
23 ~~entitlement to or the rate of payment under the medicaid program.~~

24 ~~—— (b) The term includes related documents submitted as a part of or in support of the claim.~~

25 ~~—— (39) "Mentally defective" means that a person suffers from a mental disease or defect that renders~~
26 ~~the person incapable of appreciating the nature of the person's own conduct.~~

27 ~~—— (40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating~~
28 ~~or controlling the person's own conduct as a result of the influence of an intoxicating substance.~~

29 ~~—— (41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is~~
30 ~~imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is~~

1 imprisonment in a state prison for a term of 1 year or less, except a fourth or subsequent violation of
2 61-8-401 or 61-8-406.

3 ——— (42) "Negligently" -- a person acts negligently with respect to a result or to a circumstance described
4 by a statute defining an offense when the person consciously disregards a risk that the result will occur
5 or that the circumstance exists or when the person disregards a risk of which the person should be aware
6 that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to
7 disregard it involves a gross deviation from the standard of conduct that a reasonable person would
8 observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack
9 of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

10 ——— (43) "Nolo contendere" means a plea in which the defendant does not contest the charge or
11 charges against the defendant and neither admits nor denies the charge or charges.

12 ——— (44) "Obtain" means:

13 ——— (a) in relation to property, to bring about a transfer of interest or possession, whether to the
14 offender or to another; and

15 ——— (b) in relation to labor or services, to secure the performance of the labor or service.

16 ——— (45) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the
17 sale, conveyance, or transfer of title to, interest in, or possession of property.

18 ——— (46) "Occupied structure" means any building, vehicle, or other place suitable for human
19 occupancy or night lodging of persons or for carrying on business, whether or not a person is actually
20 present. Each unit of a building consisting of two or more units separately secured or occupied is a
21 separate occupied structure.

22 ——— (47) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or
23 punished for a public offense.

24 ——— (48) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is
25 authorized. Offenses are classified as felonies or misdemeanors.

26 ——— (49) "Official detention" means imprisonment resulting from a conviction for an offense,
27 confinement for an offense, confinement of a person charged with an offense, detention by a peace officer
28 pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the
29 protection of the welfare of the person detained or for the protection of society. Official detention does
30 not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest

~~unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.~~

~~———— (50) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.~~

~~———— (51) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.~~

~~———— (52) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.~~

~~———— (53) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.~~

~~———— (54) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.~~

~~———— (55) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.~~

~~———— (56) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.~~

~~———— (57) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.~~

~~———— (58) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.~~

~~———— (59) "Premises" includes any type of structure or building and real property.~~

~~———— (60) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:~~

~~———— (a) real estate;~~

~~———— (b) money;~~

- 1 ~~—— (c) commercial instruments;~~
2 ~~—— (d) admission or transportation tickets;~~
3 ~~—— (e) written instruments that represent or embody rights concerning anything of value, including~~
4 ~~labor or services, or that are otherwise of value to the owner;~~
5 ~~—— (f) things growing on, affixed to, or found on land and things that are part of or affixed to a~~
6 ~~building;~~
7 ~~—— (g) electricity, gas, and water;~~
8 ~~—— (h) birds, animals, and fish that ordinarily are kept in a state of confinement;~~
9 ~~—— (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,~~
10 ~~blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models~~
11 ~~thereof;~~
12 ~~—— (j) other articles, materials, devices, substances, and whole or partial copies, descriptions,~~
13 ~~photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret~~
14 ~~scientific, technical, merchandising, production, or management information or a secret designed process,~~
15 ~~procedure, formula, invention, or improvement; and~~
16 ~~—— (k) electronic impulses, electronically processed or produced data or information, commercial~~
17 ~~instruments, computer software or computer programs, in either machine- or human-readable form,~~
18 ~~computer services, any other tangible or intangible item of value relating to a computer, computer system,~~
19 ~~or computer network, and copies thereof.~~
20 ~~—— (61) "Property of another" means real or personal property in which a person other than the~~
21 ~~offender has an interest that the offender has no authority to defeat or impair, even though the offender~~
22 ~~may have an interest in the property.~~
23 ~~—— (62) "Public place" means a place to which the public or a substantial group has access.~~
24 ~~—— (63) "Public servant" means an officer or employee of government, including but not limited to~~
25 ~~legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator,~~
26 ~~executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public~~
27 ~~servant" includes one who has been elected or designated to become a public servant.~~
28 ~~—— (64) "Purposely" a person acts purposely with respect to a result or to conduct described by a~~
29 ~~statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that~~
30 ~~result. When a particular purpose is an element of an offense, the element is established although the~~

1 ~~purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law~~
2 ~~defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same~~
3 ~~meaning.~~
4 ~~—— (65) (a) "Serious bodily injury" means bodily injury that:~~
5 ~~—— (i) creates a substantial risk of death;~~
6 ~~—— (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or~~
7 ~~process of a bodily member or organ; or~~
8 ~~—— (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement~~
9 ~~or protracted loss or impairment of the function or process of a bodily member or organ.~~
10 ~~—— (b) The term includes serious mental illness or impairment.~~
11 ~~—— (66) "Sexual contact" means touching of the sexual or other intimate parts of the person of~~
12 ~~another, directly or through clothing, in order to knowingly or purposely:~~
13 ~~—— (a) cause bodily injury to or humiliate, harass, or degrade another; or~~
14 ~~—— (b) arouse or gratify the sexual response or desire of either party.~~
15 ~~—— (67) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the~~
16 ~~penis of another person, penetration of the vulva or anus of one person by a body member of another~~
17 ~~person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated~~
18 ~~by another person to knowingly or purposely:~~
19 ~~—— (i) cause bodily injury or humiliate, harass, or degrade; or~~
20 ~~—— (ii) arouse or gratify the sexual response or desire of either party.~~
21 ~~—— (b) For purposes of subsection (67)(a), any penetration, however slight, is sufficient.~~
22 ~~—— (68) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise~~
23 ~~another to commit an offense.~~
24 ~~—— (69) "State" or "this state" means the state of Montana, all the land and water in respect to which~~
25 ~~the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and~~
26 ~~water.~~
27 ~~—— (70) "Statute" means an act of the legislature of this state.~~
28 ~~—— (71) "Stolen property" means property over which control has been obtained by theft.~~
29 ~~—— (72) A "stop" is the temporary detention of a person that results when a peace officer orders the~~
30 ~~person to remain in the peace officer's presence.~~

- 1 ~~—— (73) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted~~
2 ~~alterations in its existing condition, or deposit refuse upon it.~~
- 3 ~~—— (74) "Telephone" means any type of telephone, including but not limited to a corded, uncorded,~~
4 ~~cellular, or satellite telephone.~~
- 5 ~~—— (75) "Threat" means a menace, however communicated, to:~~
- 6 ~~—— (a) inflict physical harm on the person threatened or any other person or on property;~~
7 ~~—— (b) subject any person to physical confinement or restraint;~~
8 ~~—— (c) commit a criminal offense;~~
9 ~~—— (d) accuse a person of a criminal offense;~~
10 ~~—— (e) expose a person to hatred, contempt, or ridicule;~~
11 ~~—— (f) harm the credit or business reputation of a person;~~
12 ~~—— (g) reveal information sought to be concealed by the person threatened;~~
13 ~~—— (h) take action as an official against anyone or anything, withhold official action, or cause the~~
14 ~~action or withholding;~~
- 15 ~~—— (i) bring about or continue a strike, boycott, or other similar collective action if the person making~~
16 ~~the threat demands or receives property that is not for the benefit of groups that the person purports to~~
17 ~~represent; or~~
- 18 ~~—— (j) testify or provide information or withhold testimony or information with respect to another's~~
19 ~~legal claim or defense.~~
- 20 ~~—— (76) (a) "Value" means the market value of the property at the time and place of the crime or, if~~
21 ~~the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within~~
22 ~~a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the~~
23 ~~value must be determined as follows:~~
- 24 ~~—— (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or~~
25 ~~promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of~~
26 ~~the indebtedness less any portion of the indebtedness that has been satisfied.~~
- 27 ~~—— (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any~~
28 ~~valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of~~
29 ~~the instrument might reasonably suffer by virtue of the loss of the instrument.~~
- 30 ~~—— (iii) The value of electronic impulses, electronically produced data or information, computer~~

~~software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.~~

~~—— (b) When it cannot be determined if the value of the property is more or less than \$1,000 by the standards set forth in subsection (76)(a), its value is considered to be an amount less than \$1,000.~~

~~—— (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.~~

~~—— (77) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.~~

~~—— (78) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.~~

~~—— (79) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."~~

Section 1. Section 53-1-202, MCA, is amended to read:

"53-1-202. (Temporary) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; and

(c) the boot camp authorized by 53-30-403.

(3) Youth correctional services consist of the following correctional facilities or programs to

1 provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in
2 need of intervention pursuant to Title 52, chapter 5:

3 (a) Pine Hills youth correctional facility or other state youth correctional facility; and

4 (b) any other facility or program that provides custody and services for delinquent youth.

5 (4) A state institution or facility may not be moved, discontinued, or abandoned without the
6 consent of the legislature.

7 **53-1-202. (Effective on occurrence of contingency) Department of corrections.** (1) Adult and
8 youth correctional services are included in the department of corrections to carry out the purposes of the
9 department.

10 (2) Adult corrections services consist of the following correctional facilities or programs:

11 (a) the prisons listed in 53-30-101;

12 (b) appropriate community-based programs for the placement, supervision, and rehabilitation of
13 adult felons who meet the criteria developed by the department for placement:

14 (i) in prerelease centers;

15 (ii) under intensive supervision;

16 (iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

17 (iv) in other appropriate programs;

18 (c) the boot camp authorized by 53-30-403; and

19 (d) a residential alcohol treatment program located at the forensic unit at Warm Springs.

20 (3) Youth correctional services consist of the following correctional facilities or programs to
21 provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in
22 need of intervention pursuant to Title 52, chapter 5:

23 (a) Pine Hills youth correctional facility or other state youth correctional facility; and

24 (b) any other facility or program that provides custody and services for delinquent youth.

25 (4) A state institution or correctional facility may not be moved, discontinued, or abandoned
26 without the consent of the legislature."

27
28 **Section 2.** Section 61-8-731, MCA, is amended to read:

29 **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
30 **concentration -- penalty for fourth or subsequent offense.** (1) ~~On~~ On the fourth or subsequent conviction

1 under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and
2 shall be punished by:

3 ~~(a)(i)(A) imprisonment sentencing the person to the department of corrections for placement in an~~
4 ~~appropriate correctional facility or program for a term of not less than 6 months or more than 13 months,~~
5 ~~for which the imposition or execution of the first 6 months may not be suspended, and during which the~~
6 ~~person is not eligible for parole;~~

7 ~~—— (b)(ii) probation for a term of not less than 1 year 6 months or more than 4 2 years; and FOR A TERM~~
8 ~~OF 13 MONTHS. THE COURT SHALL ORDER THAT IF THE PERSON SUCCESSFULLY COMPLETES A RESIDENTIAL ALCOHOL~~
9 ~~TREATMENT PROGRAM OPERATED OR APPROVED BY THE DEPARTMENT OF CORRECTIONS, THE REMAINDER OF THE~~
10 ~~13-MONTH SENTENCE MUST BE SERVED ON PROBATION. THE IMPOSITION OR EXECUTION OF THE 13-MONTH SENTENCE MAY~~
11 ~~NOT BE DEFERRED OR SUSPENDED, AND THE PERSON IS NOT ELIGIBLE FOR PAROLE.~~

12 ~~(B) SENTENCING THE PERSON TO EITHER THE DEPARTMENT OF CORRECTIONS OR THE MONTANA STATE PRISON~~
13 ~~OR MONTANA WOMEN'S PRISON FOR A TERM OF NOT MORE THAN 5 YEARS, ALL OF WHICH MUST BE SUSPENDED, TO RUN~~
14 ~~CONSECUTIVELY TO THE TERM IMPOSED UNDER SUBSECTION (1)(A); AND~~

15 ~~(e)(iii)(C) a fine in an amount of not less than \$1,000 or more than \$10,000.~~

16 ~~—— (b) The provisions of 46-18-403 allowing credit for incarceration prior to conviction do not apply~~
17 ~~to a person sentenced under subsection (1)(a);~~

18 ~~(2) The court shall, subject to sentencing restrictions:~~

19 ~~—— (a) specify one of the following facilities as the initial place in which the term of imprisonment~~
20 ~~must be served:~~

21 ~~—— (i) a state prison;~~

22 ~~—— (ii) a regional correctional facility;~~

23 ~~—— (iii) a county jail;~~

24 ~~—— (iv) a boot camp, provided the prior approval of the department of corrections has been obtained;~~

25 ~~or~~

26 ~~—— (v) a prerelease center or, upon acceptance by the facility, a state-approved public or private~~
27 ~~treatment facility that provides the appropriate level of chemical dependency treatment, provided the prior~~
28 ~~approval of the department of corrections has been obtained; or~~

29 ~~—— (b) sentence the person to the department of corrections for placement in an appropriate~~
30 ~~correctional institution or program; and~~

~~_____ (c) order a person who is financially able to pay the costs of imprisonment, probation, and chemical dependency treatment under this section.~~

(2) The department OF CORRECTIONS may place an offender sentenced under subsection (1)(a)(i) (1)(A) in a residential alcohol treatment program operated or approved by the department OF CORRECTIONS or in a state prison.

(3) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

~~(3)(4)~~ (4) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of court-appointed counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

~~(f) treatment in a state-approved public or private treatment facility; or~~

~~(g)(f)~~ (f) any combination of the restrictions or conditions listed in subsections (3)(a) through ~~(3)(f)~~

1 (3)(e).

2 ~~(4) (a)(5)~~ Following initial placement of a defendant in a ~~boot camp, prerelease center, or treatment~~
3 facility under subsection (2)~~(a)~~, the department of corrections may, at its discretion, place the offender
4 in another facility or program.

5 ~~(b) The department of corrections may order all or any portion of the term of probation to be~~
6 ~~served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation,~~
7 ~~apply to the probation.~~

8 ~~(5) If a violation of the restrictions or conditions of the probation is established, the court may~~
9 ~~continue the period of probation or may require the defendant to serve the remainder of the probation~~
10 ~~sentence in one of the facilities set forth in subsection (2)(a) or (2)(b). The court may credit the remainder~~
11 ~~of the probation or the time to be served in a facility set forth in subsection (2)(a) or (2)(b) with all or part~~
12 ~~of the time already served on probation.~~

13 (6) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through
14 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

15

16 **SECTION 3. SECTION 61-8-732, MCA, IS AMENDED TO READ:**

17 **"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
18 **concentration -- assessment, education, and treatment required.** (1) In addition to the punishments
19 provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a
20 violation of 61-8-401 or 61-8-406 shall complete:

21 (a) a chemical dependency assessment;

22 (b) a chemical dependency education course; and

23 (c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406, except a fourth
24 or subsequent conviction for which the defendant completes a residential alcohol treatment program under
25 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

26 (2) The sentencing judge may, in the judge's discretion, require the defendant to complete the
27 chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or
28 completed before sentencing, the judge shall order the chemical dependency assessment as part of the
29 sentence.

30 (3) The chemical dependency assessment and the chemical dependency education course must

1 be completed at a treatment program approved by the department of public health and human services
2 and must be conducted by a certified chemical dependency counselor. The defendant may attend a
3 treatment program of the defendant's choice as long as the treatment services are provided by a certified
4 chemical dependency counselor. The defendant shall pay the cost of the assessment, the education
5 course, and chemical dependency treatment.

6 (4) The assessment must describe the defendant's level of addiction, if any, and contain a
7 recommendation as to education, treatment, or both. A defendant who disagrees with the initial
8 assessment may, at the defendant's cost, obtain a second assessment provided by a certified chemical
9 dependency counselor or a program approved by the department of public health and human services.

10 (5) The treatment provided to the defendant at a treatment program must be at a level appropriate
11 to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency
12 counselor pursuant to diagnosis and patient placement rules adopted by the department of public health
13 and human services. Upon determination, the court shall order the defendant's appropriate level of
14 treatment. If more than one counselor makes a determination as provided in this subsection, the court shall
15 order an appropriate level of treatment based upon the determination of one of the counselors.

16 (6) Each counselor providing education or treatment shall, at the commencement of the education
17 or treatment, notify the court that the defendant has been enrolled in a chemical dependency education
18 course or treatment program. If the defendant fails to attend the education course or treatment program,
19 the counselor shall notify the court of the failure.

20 (7) A court or counselor may not require attendance at a self-help program other than at an "open
21 meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in
22 self-help programs.

23 (8) Chemical dependency treatment must be ordered for a first-time offender convicted of a
24 violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical
25 dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of
26 public health and human services.

27 (9) (a) On a second or subsequent conviction, the treatment program provided for in subsection
28 (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to
29 the program.

30 (b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a),

1 the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended
2 sentence, and may include additional monthly monitoring for up to an additional 6 months."

3
4 NEW SECTION. Section 4. Coordination instruction. ~~(4)~~ If Senate Bill No. 207 is passed and
5 approved and if it includes a section that removes the forensic unit at Warm Springs as one of the facilities
6 or programs of the department of corrections, then [section 2 1] is void.

7 ~~(2) If the legislature fails to pass a resolution prior to April 1, 2001, directing that the forensic unit~~
8 ~~at Warm Springs remain a state facility or program under state ownership, then [section 2 1] is void.~~

9 ~~———— (3) IF SENATE BILL NO. 483 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN SENATE BILL NO. 483~~
10 ~~IS VOID.~~

11
12 NEW SECTION. Section 5. Effective date. [This act] is effective ~~January 1, 2002~~ JULY 1, 2001.

13
14 NEW SECTION. Section 6. Applicability. [This act] applies to persons sentenced under 61-8-731
15 FOR OFFENSES COMMITTED on or after [the effective date of this act].

16 - END -